

**Prepared by: Benefits and Entitlements Branch**

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**For additional Information: (703) 696-6301 or DSN 426-6301**

**FAX: (703) 696-4705 or DSN 426-4705**

## **WHEN DIVORCE HAPPENS...**

### **Things to Think About**

***A GUIDE FOR PERSONNELISTS AND EMPLOYEES***

**Defense Civilian Personnel Management Service  
Field Advisory Services Division  
1400 Key Boulevard, Suite B-200  
Arlington, VA 22209-5144**

# When Divorce Happens ...

## *Things to Think About*

### For the Personnelist:

References: 5 CFR Part 838

5 CFR Part 890, Subpart H (FEHB)

5 CFR Part 870, Subparts H and I (FEGLI)

5 U.S.C. 8341, 8342, 8345, 8346 (CSRS)

5 U.S.C. 8401, 8424, 8445, 8467, 8470 (FERS)

CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 5  
Handbook for Attorneys on Court-Ordered Retirement, Health Benefits,  
and Life Insurance Under CSRS, FERS, FEHB, and FEGLI

Federal Employees Health Benefits (FEHB) Program Handbook for  
Enrollees and Employees, Chapter on Former Spouses

Federal Employees Group Life Insurance (FEGLI) Program Handbook,  
Order of Precedence and Designation of Beneficiary Section, Court  
Orders

Thrift Savings Plan (TSP) Booklet (TSP BK11), Information About Court  
Orders

Courts can issue orders that award benefits to legally separated spouses, former spouses, and children of current employees, former employees, and retirees under the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), the Federal Employees Health Benefits (FEHB) Program, the Federal Employees Group Life Insurance (FEGLI) Program and the Thrift Savings Plan (TSP). Often we are approached about issues concerning court orders and feel inadequate to address these issues. Personnel offices should not **advise** an employee, employee's spouse, or an attorney on how to construct a court order, or **review drafts** and **make determinations** on a court order. We should be able to advise where to find information, and answer general questions.

Chapter 5 of the Office of Personnel Management's (OPM's) CSRS and FERS Handbook is a good reference to review the requirements that must be satisfied for OPM to honor a court order. In addition, the chapter contains model language to use in court orders. OPM has also published a "Handbook for Attorneys on Court-Ordered Retirement, Health Benefits, and Life Insurance Under CSRS, FERS, FEHB, and FEGLI". The Attorney Handbook can be found at <http://www.opm.gov/asd/htm/PUB.htm> or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-

7954. The order processing code is 7612 and the S/N 006-000-01408-9. The Handbook can also be ordered by telephone at (202) 512-1800.

For information or determination of benefits from the court order, the court order should be sent to: OPM, Office of Retirement Programs, Court Order Benefit Section, P.O. Box 17, Washington, DC 20044-0017. The court order may be faxed to (202) 606-0785. The phone number is (202) 606-0222. When sending the court order, the employee should include their full name, complete mailing address, a certified copy of the court order granting benefits, and a signed statement that the court order has not been amended, superseded, or set aside; and identifying information concerning the employee or retiree, including his/her full name, date of birth, and a Social Security number and mailing address. OPM's legal experts review the court orders and make the determination on whether or not the orders are valid. Personnel offices cannot make any determination or allow an enrollment in FEHB (except TCC), unless a determination is received from OPM.

In order to award CSRS or FERS benefits, the order must be issued by any court in any State, District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, or any Indian Court. A court order can apportion or divide a CSRS or FERS benefit as a result of a divorce, legal separation or annulment of marriage. The court order must expressly direct OPM to pay a portion of the monthly CSRS or FERS benefits. The spouse's share must be stated as a fixed amount, a percentage or a fraction of the annuity, or by a formula whose value is readily apparent. There is no percentage limitation on how much of a retirement annuity payment can be awarded to a former spouse. However, the payment may not exceed the "net annuity," or the amount of the lump-sum credit, in cases involving refunds of contributions. (Net annuity under CSRS means the amount of annuity payable after deducting from the gross annuity deductions for any amounts that are:

- ◆ owed by the retiree to the U.S.
- ◆ health benefits premiums
- ◆ life insurance premiums
- ◆ Medicare premiums
- ◆ already payable amount based on a court order
- ◆ Federal, State, or local income tax purposes.

For FERS, net annuity refers to the amount of annuity payable after deducting all of those listed except for Federal tax deduction. The maximum combined total of all current and former spouse survivor annuities payable is 55 percent if CSRS or 50 percent if FERS. The court order may state any percentage or fixed amount up to the maximum.

An **apportionment** payment is made while the retiree is living, and ends with the retiree's death. To receive payments after the retiree's death, the retiree must elect or the

court order must provide for a survivor annuity. A court ordered survivor annuity is not available unless the marriage lasted at least nine months. The survivor annuity ends if the former spouse remarries before age 55 unless the marriage to the retiree lasted for at least 30 years. (Note: The former spouse of a separated CSRS employee entitled to a deferred annuity may be awarded survivor benefits. However, no former spouse survivor annuity benefits are payable unless the employee dies after becoming age 62 and filing an application for retirement benefits.)

A **garnishment** (5 CFR 581) is a term to reflect a legal process under state law for enforcing existing legal obligations. Benefits under CSRS or FERS can be garnished for alimony, child support or in cases of child abuse. Garnishment orders for annuitants should be sent to OPM at the following address: Office of Personnel Management, Office of Retirement Programs, Court Order Benefit Section, Post Office Box 17, Washington, DC 20044.

An employee who has a former spouse entitled by a court order to a portion of the employee's annuity, or to a survivor annuity, **may not elect the alternative annuity**, regardless of when the marriage ended.

A **former spouse** means a living person who was married for at least 9 months to an employee or retiree who performed at least 18 months of civilian service creditable under CSRS or FERS, and whose marriage to the employee or retiree was terminated prior to the death of the employee or retiree.

#### **The Employee Retirement Income Security Act (ERISA) and Qualified Domestic Relations Order (QDRO):**

The Employee Retirement Income Security Act (ERISA) was designed to cover apportionment of 401 retirement plans. A Qualified Domestic Relations Order (QDRO) is an instrument used by courts to divide retirements under ERISA. Federal law exempts CSRS and FERS from ERISA. TSP is not a 401 plan; therefore, an ERISA or a QDRO is not required.

## **Information for Employees**

### **A court order (divorce decree) can affect any of the following:**

- Annuity payments
  - Your monthly retirement checks once you retire; payable to former spouse while you are living and ends when you die.
- Survivor benefits
  - Payable to spouse or former spouse when you die.
- FERS Basic Death Benefit
  - If a FERS employee dies while still employed, the amount payable from the lump sum death benefit.
- Refund of contributions
  - If you resign and want to draw out your CSRS or FERS monies—and give up your right to a CSRS or FERS retirement—the court could award a portion or all to former spouse.
- Lump sum death benefit
  - No survivor annuity payable and you die before you have received payments equal to the amount you have paid into the retirement fund.
- Federal Employees Health Benefits (FEHB)
  - May permit former spouse to continue coverage through spouse equity. (5 CFR 890, subpart H, 5 USC 8901 and 8905)
- Federal Employees Group Life Insurance (FEGLI)
  - May require you to assign your FEGLI coverage or name as beneficiary former wife and children. (5 CFR 870, subparts H and I, 5 USC 8705 and 8706).
- Thrift Savings Plan (TSP)
  - May require payment to former spouse or children from your TSP account. (5 CFR 1650, subpart G and I, “Information about Court Orders,” TSP BK11, found on TSP web site, [www.tsp.gov](http://www.tsp.gov).)

### **Federal Employees Health Benefits Program (FEHB):**

As an employee, you have 31 days before to 60 days after your divorce to make changes to your health insurance program. The effective date is the beginning date of the pay period after receipt of the election form in your servicing personnel office.

After your divorce, your former spouse cannot continue to receive FEHB coverage under your self and family enrollment. On the date of the divorce, the former spouse's coverage is terminated. The FEHB program has a 31-day temporary extension of coverage, at no cost. At the end of the 31-day period, your former spouse can enroll in Temporary Continuation of Coverage (TCC) for 36 months after losing coverage under your Self and Family Coverage. The former spouse pays the employee share, employer share of the FEHB premiums, plus a two- percent handling charge. If your former spouse

wants TCC, you should let your servicing personnel office know so they can send him/her a letter offering it. The former spouse must apply for and establish eligibility for enrollment within 60 days of the divorce. A court order may state that you must provide the former spouse with health insurance. In this case, you would provide health insurance through some other source other than FEHB.

If your former spouse is awarded part of your annuity or part of a survivor annuity, he/she can enroll in the Federal Employees Health Benefits Program as a former spouse (Spouse Equity Act of 1984). The eligibility requirements are:

- ◆ Divorced during your employment or receipt of annuity
- ◆ Covered as a family member under an FEHB enrollment at least one day during the 18 months before your marriage ended (This requirement is also met if both you and your former spouse each have self only FEHB enrollments.)
- ◆ He or she is entitled to a portion of your annuity or to a former spouse survivor annuity; and
- ◆ He or she has not remarried before age 55. (May not apply if the spouse was married to the employee for 30 or more years.)

The former spouse pays 100% of the cost and the coverage may continue for an unlimited time (as long as entitled to a survivor benefit). The former spouse should contact the servicing personnel office for instructions. The certified court order must be sent to OPM for approval. If approved, a letter from OPM will indicate that the court order is acceptable and the former spouse may enroll. If it is not approved, the former spouse cannot enroll under the Spouse Equity Act. Because of this process, former spouses should enroll in TCC and upon approval by OPM, enroll through the personnel office under the Spouse Equity provisions. The former spouse should be informed that there are time frames that must be honored so a timely notification to the personnel office is very important. The former spouse has 60 days to apply after the date of OPM's notice of his/her eligibility to enroll based on the court order.

If approved because the court order provided an apportionment of the retiree annuity, upon the retiree's death, the former spouse entitlement to FEHB ends. If approved because the court order provided for a survivor annuity, FEHB ends if the former spouse loses entitlement to the survivor annuity (such as, marriage before age 55).

**Federal Employees Group Life Insurance (FEGLI):**

If your divorce decree states that you must keep a certain amount of life insurance and name your former spouse as beneficiary, you can:

- ◆ Give a certified copy of the divorce decree to your servicing personnel office for filing in your Official Personnel Folder (OPF). If the personnel office receives the certified copy before you die, it will take precedence over a designation of beneficiary or the normal order of precedence.
- ◆ Make an irrevocable assignment of your government life insurance. An assignment automatically cancels a prior designation of beneficiary. Under the FEGLI law, an insured person may change his or her designation of beneficiary at any time. Assignment of FEGLI coverage to a former spouse, however, provides a means for ensuring that the FEGLI benefits awarded to a former spouse cannot be circumvented by a change in beneficiary.
- ◆ Consider purchasing private life insurance in the dollar amount required.

**Survivor Benefits:**

The amount of survivor benefits can be a minimum of \$1 a month up to a maximum of 55% of your basic annuity if you are covered under the Civil Service Retirement System (CSRS). If covered under the Federal Employees Retirement System (FERS), the court can award the former spouse any percentage up to a maximum of 50%. A minimum amount may be given so that the former spouse will be entitled to FEHB. Court orders cannot change the fact that the former spouse loses his/her survivor benefits if remarried before age 55. If your former spouse withholds information of his/her remarriage, the penalty can be \$5,000 and 10 years in prison for falsification. Court orders can be changed before you retire or die; however, after you retire or die, they cannot be modified to affect survivor benefits.

**Refund of Contributions:**

A court order can prevent payment of a refund to a separated employee (before becoming eligible to retire and wants his/her CSRS or FERS money refunded) to protect a survivor benefit or apportionment awarded by the court. If the employee dies, and there is no survivor annuity payable, a lump sum of the retirement contributions can be ordered to be paid to the former spouse, spouse, or child.

**Military Retired Pay:**

The rules for court ordered former spouse benefits under the Uniform Code are different from the CSRS and FERS rules. Before the 1997 National Defense Authorization Act (PL 104-201) was passed, if a military retiree came to work for the government and decided to waive military retired pay to combine the military service with the civilian service, and a former spouse had been awarded benefits from the military retirement, then the former spouse was out of his/her share from the military retirement. Now the military retiree must consent to OPM deducting and paying a former spouse an amount equal to

what was being deducted and paid by the Military Finance Center. If the member does not consent, he/she cannot combine the military with the civilian service. OPM will deem the consent, unless the person indicated otherwise.



**The following Questions and Answers may be of assistance:**

**1. Now that I am divorced, may I change my health insurance company?**

*Yes, divorce is an event that allows you to change from one plan or option to another. To do this, you should complete an SF-2809 and submit it to your personnel office within 60 days of the divorce.*

**2. I still have children to cover under my health insurance and want to keep the same plan. How do I take just my spouse's name off of my health insurance?**

*You should call your insurance company and tell them. There is no requirement to complete a new SF 2809.*

**3. If I keep Family Coverage under my Life Insurance and my ex-spouse dies, will I receive money for his/her death?**

*No. FEGLI family coverage only covers eligible family members. An ex-spouse is not an eligible family member.*

**4. What about my beneficiary forms?**

*If you have designated your former spouse for your TSP, FEGLI insurance, Unpaid Compensation, and/or CSRS/FERS retirement lump sum payment, you will need to fill out a new designation of beneficiary for each program. The event (divorce) does not change your beneficiary form(s).*

**5. What is a certified copy of a court order?**

*A certified copy is a copy of the order signed and certified by an official of the court that issued the order, verifying that it is a true copy of the original.*

**6. Can I elect a survivor annuity for my former spouse?**

*You can elect a survivor benefit for your former spouse so long as the former spouse meets the definition of a former spouse. In other words, has not remarried (even though they may not be married at the time). If you are married now, you must have the consent of your current spouse to elect a benefit for your former spouse if there is no court order providing for the benefit.*

**7. Does the court awarded former spouse benefits increase by cost of living adjustments?**

*If the court order awards adjustments to an apportionment or to a survivor annuity before the date of retirement and after, the survivor benefit will increase accordingly. Unless the court order directly orders otherwise, a court order that awards a former spouse a portion of an employee annuity either on a percentage basis or by use of a fraction or formula, the former spouse's share of the employee annuity will be adjusted to maintain the same percentage or fraction whenever the employee annuity*

*changes. However, when the court order awards a former spouse a specific dollar amount from the employee annuity, this prevents the former spouse from benefiting from salary and cost-of-living adjustments after the date of the decree, unless the court expressly orders their inclusion.*

**8. If I have provided an apportionment, which ends upon my death, is the former spouse allowed to continue FEHB after the apportionment ends?**

*No. Once the former spouse loses entitlement to the apportionment, they cannot continue FEHB. The former spouse will have the option to convert their FEHB.*

**9. I currently have self and family FEHB coverage for my spouse and children and have a legal separation agreement. I want to take my spouse off my policy prior to the divorce. How do I go about removing my spouse from my policy?**

*As long as you are separated, your spouse is an eligible family member and is entitled to be covered under your FEHB self and family coverage. When the divorce is final, he/she will not be an eligible family member.*

**10. I am divorced and have a court order requiring me to provide health insurance to my former spouse and children. Since my former spouse is currently covered, I plan to keep my former spouse on my FEHB. My children are living with my former spouse. Is this correct?**

*Since you are divorced, your former spouse is no longer an eligible family member, regardless of the court order and cannot be covered under your FEHB. You must provide health insurance through some other means other than FEHB. Your former spouse, however, may enroll in TCC, or if the spouse has an annuity right, upon approval from OPM, may enroll in FEHB under the Spouse Equity Act. If the children are your biological or adopted children, then you can cover the children under your self and family enrollment in FEHB regardless of where the children live. If the children are your spouse's, coverage must be provided through TCC (and maybe your spouse's self and family policy) or some other private insurance.*

## GLOSSARY

**Amounts of Payment:** The amount of the payment will not be less than one dollar and, in the absence of compelling circumstances, will be in whole dollars. The maximum payable will be 55% under CSRS of the employee's annuity, 50% under FERS.

**Child Abuse Creditor:** An individual who applies for benefits under CSRS or FERS based on a child abuse judgment enforcement order.

**Child Abuse Judgment Enforcement Order:** A court or administrative order requiring OPM to pay a portion of an employee annuity or a refund of employee contributions to a child abuse creditor as a means of collection of a "judgment rendered for physically, sexually, or emotionally abusing a child" as defined in sections 8345(j)(3)(B) and 8467(c)(2) of title 5, United States Code.

**Civil Service Retirement System (CSRS):** The retirement system for Federal employees described in sub-chapter III of chapter 83 of title 5, United States Code.

**Commencing Date of Payments:** A court order acceptable for processing is effective against an employee's annuity and will begin to accrue with the first day of the second month after OPM receives the court order.

**Court Order:** Any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, The Northern Mariana Islands, or the Virgin Islands, or any Indian Court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

**Employee Annuity:** The recurring payments under CSRS or FERS made to a retiree.

**ERISA:** The Employees Retirement Income Security Act, 29 U.S.C. 1001 *et seq.*

**Federal Employees Retirement System (FERS):** The retirement system for Federal employees described in chapter 84 of title 5, United States Code.

**Former Spouse:** (1) In connection with a court order affecting an employee annuity or a refund of employee contributions, a living person whose marriage to an employee has been subject to a divorce, annulment of marriage, or legal separation resulting in a court order, or (2) In connection with a court order awarding a former spouse survivor annuity, a living person who was married for at least 9 months to an employee or retiree who performed at least 18 months of civilian service covered by CSRS or who performed at

least 18 months of civilian service creditable under FERS, and whose marriage to the employee or retiree was terminated prior to the death of the employee or retiree.

**Former Spouse Survivor Annuity:** A recurring benefit under CSRS or FERS, or the basic employee death benefit under FERS, that is payable to a former spouse after the employee's or retiree's death.

**Gross Annuity:** The amount of monthly annuity payable after reducing the self-only annuity to provide survivor annuity benefits, if any, but before any other deduction. Unless the court order expressly provides otherwise, gross annuity also includes any lump-sum payments made to the retiree through voluntary contributions.

**Net Annuity:** The amount of monthly annuity payable after deducting from the gross annuity any amounts that are: owed by the retiree to the U.S.; deducted for health insurance; deducted for life insurance; deducted for Medicare premiums; properly withheld for Federal income tax purposes; properly withheld for State income tax purposes, deductions for amount payable to another person based on a court order acceptable for processing.

**Prorata Share:** One-half of the fraction whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

**Qualifying Domestic Relations Orders (QDRO):** Any court order labeled as a qualified domestic relations order or issued on a form for ERISA qualified domestic relations orders is not a court order acceptable for processing unless the court order expressly states that the provisions of the court order concerning CSRS or FERS benefits are governed by subpart C of part 838, Title 5 Code of Federal Regulations.

**Retiree:** A former employee or Member who is receiving recurring payments under CSRS or FERS based on his or her service as an employee.

**Separated Employee:** A former employee or Member who has separated from a position in the Federal Government covered by CSRS and FERS, and is not currently employed in such a position, and who is not a retiree.

**Termination of Payments:** A former spouse portion of an employee annuity stops accruing at the earliest of the date on which the terms of the court order require termination; receipt of a court order that invalidates, vacates or sets aside the court order; receipt of an amended court order; the death of a retiree; or the former spouse dies.